NOT FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CLARE BARON, Petitioner and Respondent, vs. ANTHONY BARON, Appellant.	Civil No. 39980 S.Ct. No. WED 16399 Court of Appeal-Second Dist. FILED Mar 15 1973 Clay Robbins, Jr., Clerk

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Appeal from judgment of the Superior Court of Los Angeles County. Goscoe O. Farley, Judge. Affirmed.

For Appellant: Marvin M. Mitchelson

For Respondent: Edward M. Raskin; Gerald E. Lichtig; John A. Ellis.

Appeal from interlocutory judgment of dissolution of marriage.

Appellant, Anthony Baron (Husband) and respondent, Clare Baron (Wife), were married on December 30, 1967. On August 22, 1967, prior to the marriage, Wife transmitted a check for $25,000 to Husband for the purpose of opening a stock account in his name with Wife's stockbroker, Mr. John Saffro of Dean Witter & Co. The parties agreed and Wife instructed her stockbroker that the $25,000 principal was to remain hers and the profits and dividends, if any, were to be sent to Husband. After the marriage took place, Wife on August 27, 1968, transmitted to Husband a check for $23,244.50, which he deposited in his bank account. On January 28, 1969, Wife placed in Husband's control a check for $50,990.55, of which he used $17,000 to open a second stock trading account in his name with Mr. Saffro and $28,000 to purchase three automobiles which were registered in his name.

The parties separated on March 30, 1970, and on May 12, 1970, Wife filed a Petition for Dissolution of Marriage pursuant to Civil Code, section 4506(1), in which she alleged that all of the assets in possession of appellant originated from

her separate property. Appellant alleged an interest in certain real property and "various other stocks, bonds and other assets".

In this appeal from the interlocutory judgment of dissolution appellant contends: (1) the trial court improperly restricted his right of cross-examination; (2) the evidence was insufficient to support the finding that respondent owned the stock accounts; and (3) the loss of the court reporter's notes covering the proceedings of one day of the trial resulted in prejudice to appellant. We find these arguments to be without merit.

The court, in relevant part, made the following findings of fact:

"B. The Court finds that Petitioner placed in the possession and control of Respondent certain moneys, including but not limited to, the following:

"Check dated August 22, 1967 in
"the sum of $25,000.00;
"Check dated August 27, 1968 in
"the sum of $23,244.50;

"Check dated January 28, 1969 in
"the sum of $50,990.55,

and the Court finds that said payments were loans by Petitioner to Respondent and were not gifts. Said funds were delivered to Respondent by Petitioner in trust for her use and benefit and said property and the proceeds thereof and the properties acquired therewith at all times thereafter continued to be the separate property of Petitioner and Respondent held same in trust for Petitioner, who was the sole beneficial owner thereof and entitled to have the same conveyed to her.

"1. The foregoing funds were satisfactorily traced by Petitioner and Petitioner established that the moneys and stocks existing in the margin and cash accounts at DEAN WITTER & CO., and standing in the name of Respondent and bearing account number 40-19427, including but not limited to the following:

"(a) 2300 shares General Exploration;

"(b) 400 shares American Export Industries;

"(c) 300 shares AMPCO Pittsburg Corporation;

"(d) 1000 Ling Tempco Vought Warrants, were derived from said funds, and said stocks and moneys existing in said margin and cash accounts are the sole and separate property of Petitioner.

"2. The foregoing funds were satisfactorily traced by Petitioner and Petitioner established that the purchase of that certain 1961 Rolls Royce Silver Cloud automobile, bearing California license number 505 APB, presently in the possession of Husband and in his name as legal owner, and that certain 1967 Mercedes Benz automobile, bearing California license number 535 ZWG, presently in the possession of Husband, in the Wife's name as registered owner and in Husband's name as legal owner, were derived from said funds and said automobile are the sole and separate property of Petitioner."

The testimony of respondent and checks Wife transferred to Husband provided substantial evidence to support the finding of the trial court that Wife owned the stock accounts which were opened in the name of appellant. (See Barnes v. McKendry, 260 Cal.App.2d 671.) It is well established that, "When a finding of fact is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination of whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding. (citation)." (Lipka v. Lipka, 60 Cal.2d 472, 475. (Italics the court's). (See also Adoption of R.R.R., 18 Cal.App.3d 973, 983.) "All conflicts must be resolved in favor of the prevailing party and the evidence viewed in the light most favorable to him." (Taormino v. Denny, 1 Cal.3d 679, 686.)

During an extensive cross-examination of respondent, covering most of the afternoon of one day of the trial and part of the morning of the next, appellant's counsel attempted to prove that several of the

items which respondent claimed to have given to appellant as loans or advances were actually gifts and, in this manner, to establish a "common scheme and uniform series of gifts" by respondent to appellant. It was developed that respondent gave appellant the following as gifts: a $2,000 diamond ring; a $7,000 star sapphire ring, a watch, and several trips to Europe. Respondent also testified, however, that she gave appellant the following as loans or advances to be repaid at such time as he was financially able to do so: $3,000 to obtain a divorce from his wife so he would be free to marry respondent; a $10,000 Maserati Mistral automobile; $5,000 worth of Israel bonds, and various sums of money for appellant's family in Israel. The court curtailed this cross-examination after it became repetitive.

In addition, when respondent stipulated that she was making no claim to any of these sums, further questioning on the matter became irrelevant, since the issue of whether or not these sums were loans or gifts had no bearing on the nature of the sums given by respondent to appellant to

open stock accounts. (People v. Blackwell, 257 Cal.App.2d 251, 255-56; People Ex Rel. Dept.Pub.Wks. v. Miller, 231 Cal.App.2d 130, 134-135.)

It is settled that "A trial court has a clear duty to supervise the conduct of the trial to the end that it may not be unduly protracted and that other litigants too may have their day in court. In carrying out this duty the court may confine cross-examination within reasonable limits and may curtail cross-examination which relates to matters already covered, or which are irrelevant. These are matters clearly within the court's discretion and only a manifest abuse thereof will require a reversal (citation". (Sullivan v. Dunnigan 171 Cal.App.2d 662, 670.) (See also Marshall v. Marshall, 232 Cal.App.2d 232, 254-55; and Garcia v. Hoffman, 212 Cal. App.2d 530, 537.) There was no abuse of discretion - manifest or otherwise.

Appellant's contention in respect of the loss of reporter's notes is without merit. The record indicates that most of the trial proceedings of May 12, 1971, were not transcribed "due to the fact that the

reporter's notes for this day have mysteriously disappeared; * * *." Based on this fact, appellant, after judgment, moved for a new trial pursuant to section 914, Code of Civil Procedure. (See California Rules of Court, Rule 4(e), Draftsman's note (e); and Fickett v. Rauch, 31 Cal.2d 110.)

The order denying the motion for a new trial was not error. The settled statement discloses that the omitted testimony raised no substantial controversial issues concerning which a judgment on the merits would depend. (See Fickett v. Rauch, 31 Cal.2d, supra.) The statement merely shows respondent Wife testified she gave appellant a check for $23,244.50 dated August 27, 1968, for the purpose of loaning appellant money to give to his family. Respondent was not cross-examined regarding this testimony.

The judgment is affirmed.

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ROTH, P.J.

We concur:

HERNDON, J.

COMPTON, J.